

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM HOWELL,

Plaintiff,

v.

MONROE COUNTY, et al.,

Defendants.

DECISION & ORDER

16-CV-6117CJS

William Howell (“Howell”) filed this action against Monroe County, Correctional Medical Care, Inc. (“CMC”), and several individual defendants employed by either Monroe County or CMC (collectively “County Defendants”), asserting claims under 42 U.S.C. § 1983 and various state law claims arising out of his medical treatment while incarcerated at the Monroe County Jail.¹ (Docket # 1). Currently pending before this Court is Howell’s motion to compel the County Defendants to provide responses to discovery demands propounded by Howell and for an extension of the scheduling order. (Docket # 27).

Specifically, Howell seeks an order compelling the County Defendants to respond to the request for documents he propounded on July 15, 2016. (Docket ## 27-1 at ¶¶ 4-5; 27-2). According to Howell, despite repeated representations from the County Defendants that responses were forthcoming, the responses remain outstanding. (Docket # 27-1 at ¶¶ 6-7). Additionally, Howell requests an extension of the current scheduling order. (*Id.* at ¶ 9).

¹ Howell also filed this action against Shahid Ali, N.P. (“Ali”), but the pending motion does not seek any relief against that defendant. (Docket ## 1, 27).

On May 1, 2017, this Court issued a motion scheduling order requiring the County Defendants to respond to Howell's motion to compel by no later than May 23, 2017, and scheduling oral argument for June 20, 2017. (Docket # 28). The County Defendants did not oppose the motion. Having received no opposition from the County Defendants, the Court hereby cancels the oral argument.

Failure to oppose a pending motion may be fairly construed as a lack of opposition to the requested relief or as a waiver of the party's right to be heard in connection with the motion. *See, e.g., TCPIP Holding Co. v. Haar Commc'ns Inc.*, 2004 WL 1620950, *4 (S.D.N.Y. 2004) (defendant's failure to respond to motion was sufficient basis to grant motion by default); *Loew v. Kolb*, 2003 WL 22077454, *1 (S.D.N.Y. 2003) (same). In this case, the motion scheduling order afforded the County Defendants sufficient time to respond to the pending motion. The County Defendants have failed to oppose the motion and have not contacted the Court to request an extension of the deadline to file a response to the motion. Accordingly, Howell's motion to compel is granted on the grounds that it is unopposed, and the County Defendants are ordered to provide written responses and produce documents responsive to Howell's document demands by no later than **July 7, 2017**. The County Defendants are cautioned that non-compliance with court-ordered deadlines or other obligations may result in the imposition of sanctions, including the striking of their answer. Howell's motion to extend the current scheduling order is granted. The Court will issue amended scheduling deadlines during the status conference currently scheduled for June 20, 2017.

CONCLUSION

Accordingly, Howell's motion to compel and for an extension of the scheduling order (Docket # 27) is **GRANTED. Oral argument scheduled for June 20, 2017, is CANCELLED. The status conference shall proceed on that date and time as scheduled. IT IS SO ORDERED.**

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
June 13, 2017